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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SMITH BROTHERS CONSTRUCTION,

Plaintiff and Respondent,

v.

T.S. STONE AND TITLE, INC.,

Defendants;

WILLIAM K. BREWER,

Objector and Appellant.

D069212

(Super. Ct. No. 37-2012-00084342-
CU-BC-CTL)

APPEAL from a postjudgment order of the Superior Court of San Diego County,

Joan M. Lewis, Judge. Reversed.

William K. Brewer, in pro. per., for Objector and Appellant.

Meyers Fozi and Neal S. Meyers, for Plaintiff and Respondent.

I

INTRODUCTION

William K. Brewer appeals from a postjudgment order imposing a monetary sanction of \$5,070 for directing his client not to answer certain questions at a judgment debtor examination conducted by Smith Brothers Construction (Smith). He contends we must reverse the order because the order did not specify the legal basis for the sanction. He further contends, to the extent the court may have imposed the sanction under either Code of Civil Procedure¹ section 708.170 or section 2023.030, section 708.170 does not authorize sanctions against an examinee's attorney and section 2023.030 does not apply to judgment debtor examinations.

We need not address whether the court should have specified the legal basis for the sanction in its order or whether the court had the authority to impose the sanction under section 708.170 because Smith only sought the sanction under section 2023.030.² As we agree section 2023.030 does not apply to judgment debtor examinations, we reverse the order.³

¹ Further statutory references are to the Code of Civil Procedure unless otherwise stated.

² We nonetheless note section 708.170 authorizes sanctions against a person required to appear at a judgment debtor examination, but not against the person's attorney. (*Eby v. Chaskin* (1996) 47 Cal.App.4th 1045, 1049.)

³ Smith's motion for sanctions on appeal and request to file a reply in support of the motion are moot in light of our conclusion.

II

BACKGROUND

Smith obtained a judgment against T.S. Stone and Tile, Inc. (Stone) for \$133,872.50. After Stone failed to satisfy the judgment and purportedly went out of business, Smith noticed a judgment debtor examination for Stone's president, Anthony Sciarrino (Sciarrino). Brewer represented Sciarrino at the examination and instructed Sciarrino not to answer several questions, including questions related to whether Sciarrino had formed a new corporation, which replicated Stone's business and operated from the same location as Stone.

Smith brought a motion under sections 708.110 and 2023.030 to compel answers to the questions. As part of the motion, Smith also sought monetary sanctions under section 2023.030 against Sciarrino and Brewer for the \$10,140 in attorney fees and costs Smith expended conducting the examination and bringing the motion to compel.

Before the motion to compel could be heard, Stone filed for bankruptcy protection and the court stayed the matter as to Stone. However, the court granted the part of the motion seeking monetary sanctions, ordering Sciarrino and Brewer to each pay Smith \$5,070.⁴

⁴ Whether the court could rule on the sanction request without first ruling on the motion to compel was not an issue raised on appeal.

III

DISCUSSION

Section 2023.030 is part of the Civil Discovery Act (Act) (§ 2016.010 et seq.). The Act applies to discovery aiding the enforcement of a money judgment only to the extent provided in sections 708.010 through 708.030. (§ 2016.070.) These sections provide for discovery through written interrogatories (§ 708.020 subd. (a)) and inspection demands (§ 708.030, subd. (a)). These sections do not address judgment debtor examinations. Therefore, the Act and its associated remedies do not apply to judgment debtor examinations and the court had no authority under the Act to sanction Brewer for his conduct at Sciarrino's judgment debtor examination.

IV

DISPOSITION

The order is reversed. The parties are to bear their own costs on appeal.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

IRION, J.